

MEMO ENDORSED

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April 25, 2024

Via ECF and E-Mail
Hon. Valerie E. Caproni, U.S.D.J.
Thurgood Marshall U.S. Courthouse
40 Foley Square, Courtroom 443
New York, NY 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/26/2024

Re: *Henri v Thelus et al.*, Case No. 1:24-cv-00329-VEC

Dear Judge Caproni:

We represent plaintiff Guerrier Henri, and write in accordance with Rule 3A of Your Honor's Individual Practices, and Paragraph 2 of the Notice of Initial Pretrial Conference, as amended on April 1, 2024 (Dkt. # 19), and in anticipation of the Initial Pretrial Conference to be held on May 3, at 10:00 a.m.

First, I must inform the Court that on the morning of April 24, I sent by email a copy of a draft of this letter to defendants' counsel, with a request that he prepare his portion of this letter and the Notice, and forward them to me for final editing and filing. I received an automated email informing me that he was on trial, and directing me to another attorney in his office, and I forwarded my email to that attorney. But as of this writing, 6:30 pm, I have received no response. I attach copies of those emails as an exhibit.

Therefore, this letter, and the Case Management Plan, are solely from me.

1. A brief description of the case, including the factual and legal bases for the claim(s) and defense(s).

Description by Plaintiff

This is an action for defamation. Plaintiff is a radio broadcaster from Haiti and presents a nightly show there. The defendant Thélus presents a weeknight show on Facebook and YouTube, and publishes articles on a website, tripfoumi.com, which is a news source about events in Haiti. Defendant Achill is the owner of the website tripfoumi.com

Plaintiff's claims arise from false and defamatory statements which Thélus made, and which about him, which impute criminality, because they state that plaintiff was being prosecuted for "complicity and relations with armed gangs," and that he had "apologized for putting notorious criminals on the air." But he has never been charged with any crime anywhere, and the Public Prosecutor made clear that plaintiff had not been—and would not be—charged.

The statements were subsequently republished in slightly revised form, in response to a cease-and-desist letter, but repeated the same defamatory statements, thus giving rise to a second claim.

Because the statements which the defendants published were not “a fair and true report of any...official proceeding,” the privilege of N.Y. Civil Rights Law § 74 does not apply here.

Description by Defendants:

2. Contemplated Motions

The defendants have filed a motion to dismiss the complaint, and plaintiff intends to file an amended complaint as of right. We would ask the Court to set dates for the complaint, motion and response at the conference.

3. Basis For Subject Matter Jurisdiction

Plaintiff is a citizen and resident of Haiti and defendants are residents of the State of New York. Jurisdiction is based upon diversity of citizenship pursuant to 28 U.S.C. §1332(a)(2), as the plaintiff is a citizen of a foreign state, while the defendants are citizens of New York, and the amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.

4. Prospect For Settlement

No settlement discussions have taken place to date, and the parties are open to settlement discussions after substantive discovery takes place.

Defendants are required to supplement Plaintiff's letter and proposed case management plan with their responses by no later than April 29, 2024.

The Initial Pretrial Conference will take place in person on May 3, 2024 at 10:00 A.M. in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York, 10007.

SO ORDERED. 4/26/2024



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

/s/ Richard A. Altman
LAW OFFICE OF RICHARD A. ALTMAN
Attorneys for Plaintiff
150 East 56th Street, Suite 12B
New York, NY 10022
212.633.0123

Date: Wed, 24 Apr 2024 10:46:09 -0400
To: "Daniel Szalkiewicz" <daniel@lawdss.com>
Subject: Henri v Thelus,
From: "Richard A. Altman" <altmanlaw@earthlink0net>
Organization: Attorney at Law

Good morning Daniel,

We must file our Initial Pretrial materials tomorrow. So here is my draft letter, and the conference form. Please provide me with your submissions for inclusion, and I will file both tomorrow.

Thank you,

Richard

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Automatic reply: Out of Office Re: Henri v Thelus,

To: altmanlaw@earthlink.net
From: "Daniel Szalkiewicz" <daniel@lawdss.com>
Date: Wed, 24 Apr 2024 10:46:15 -0400
Subject: Automatic reply: Out of Office Re: Henri v Thelus,

I am out of the office on trial with limited access to voice and email. If you have an emergency, please contact Cali Madia at cali@lawdss.com. Otherwise, I will respond as soon as I can upon my return.

--

Very Truly Yours,

Daniel S. Szalkiewicz, Esq.

Daniel Szalkiewicz & Associates, P.C.

23 West 73rd Street, Suite 102

New York, New York 10023

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Direct Dial: (212) 760-1007

Cell: (929) 373-2735

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Organization: Attorney at Law
Subject: Henri v Thelus,
Date: Wed, 24 Apr 2024 10:52:08 -0400
To: "cali@lawdss.com" <cali@lawdss.com>
From: "Richard A. Altman" <altmanlaw@earthlink.net>

Good morning,

I just sent this email to Mr. Szalkiewicz, and got an automatic response. So please let me know how we are going to proceed.

We must file our Initial Pretrial materials tomorrow. So here is my draft letter, and the conference form. Please provide me with your submissions for inclusion, and I will file both tomorrow.

Thank you,

Richard

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